DOCUMENT RESUME

ED 153 639 IR 005 990

TITLE The Plain Rapper. Revised.
INSTITUTION New Hampshire Educational Media Association, Concord.
PUB DATE 77
NOTE 73p.

EDRS PRICE MF-$0.83 HC-$3.50 Plus Postage.
DESCRIPTORS *Academic Freedom; Bibliographies; Censorship; *Court Litigation; Educational Policy; Freedom of Speech; *Instructional Materials; *Legal Problems; Library Material Selection; *Media Selection; Media Specialists; School Personnel; *School Policy

ABSTRACT

This is a guide to policies and procedures for instructional material selection and reconsideration for school media personnel. It includes the basic statements, interpretations, writings, and forms from national library and teacher organizations. A major section discusses legal precedents in the area of intellectual freedom, in addition to information concerning the interpretation of the First and Fourteenth Amendments to the U.S. Constitution as they affect school media personnel. Finally, bibliographies are provided on media selection and censorship, and on the legal aspects of intellectual freedom as derived from the publication of national organizations involved with intellectual freedom, libraries, and educational management. (DAG)

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THE PLAIN RAPPER

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Shelley Lochhead

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC) AND USERS OF THE ERIC SYSTEM."

NEW HAMPSHIRE
EDUCATIONAL MEDIA
ASSOCIATION
INTELLECTUAL FREEDOM COMMITTEE

1977

IR005 990

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Constitution of the United States

Amendment 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment 14 Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

PREFACE

The New Hampshire Educational Media Association presents a first revision of the "Plain Rapper" originally produced by its Intellectual Freedom Committee in February 1976 as a guide to selection and reconsideration policies and procedures for school media personnel.

In the Suggestions for the selection of instructional materials by local school boards and school personnel, the New Hampshire Department of Education, Division of Instruction states that "it is the duty of each school board to develop a policy statement which will assist in dealing with the selection process and reviewing of resources which become controversial".

With this report in mind, there is offered an updated statement of Policies for Selection of School Library Media Resources and a sample form - Citizen's Request for Reconsideration of Library Media Materials.

A selection of basic statements, interpretations, writings, and forms from such organizations as the American Library Association, the American Association of School Librarians, and the National Council of Teachers of English is also included.

New to this publication is a section on the legal precedents in the area of intellectual freedom.

This topic has been extensively researched and summarized by Shelley Lochhead and Libby Robbie to provide easy access to information concerning interpretations of the First and Fourteenth Amendments to the U.S. Constitution, especially as they affect school media personnel.

There are bibliographies on media selection and censorship, and on legal aspects of intellectual freedom based on the publications of the American Library Association, Office of Intellectual Freedom; The American Association of School Librarians, Intellectual Freedom Representation and Information Committee; the American Civil Liberties Union; Eric Clearinghouse on Educational Management and original searches of periodical material.

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Rev. 1--March 1977

Part I

Selection and reconsideration policies and procedures

Policies for Selection and Procedures
for Handling Challenged Materials in
School Media Centers

(A Sample Policy Statement)

I. RESPONSIBILITY FOR SELECTION OF MATERIALS.

The _____school board is legally responsible for all matters relating to the operation of_____schools, including the library media resource center. This school board subscribes to the Library Bill of Rights, the Freedom to Read Statement (ALA) and the School Library Bill of Rights (AASL).

The responsibility for the selection of library media resources is delegated to the professionally trained personnel employed by the school system. Recommendation of resources may involve many people: principals, supervisors, teachers, pupils, parents and laypersons. The responsibility for coordinating the selection of library media resources and making the recommendation for purchase rests with the professionally trained media personnel.

II. OBJECTIVES OF SELECTION

The primary objective of the school's educational media center is to implement, enrich and support the educational program of the school. It is the responsibility of the center to provide a wide range of materials on all levels of difficulty, with diversity of appeal, and the presentation of different points of view.

The _____school board asserts that the responsibility of the library media center is:

to provide materials that will enrich and support the curriculum, taking into consideration the varied interests, abilities and maturity levels of the pupils served.

to provide materials that will stimulate growth in factual knowledge, literary appreciation, aesthetic values and ethical standards.

to provide a background of information that will enable pupils to make intelligent judgements in their daily lives.

to provide materials on opposing sides of controversial issues so that young citizens may develop, under guidance, the practice

of critical analysis of all media.

to provide materials representative of the many religious, ethnic and cultural groups and their contributions to our American heritage.

to place principle above personal opinion and reason above prejudice in the selection of materials of the highest quality in order to assure a comprehensive collection, appropriate for the users of the library media center.

III. CRITERIA FOR SELECTION OF LIBRARY MEDIA RESOURCES.

Needs of the individual school based on knowledge of the curriculum, teacher and student needs, and of the existing collection are given first consideration. Materials for purchase are considered on the basis that they should:

1.) Be accurate and objective

2.) Represent the broad spectrum of viewpoints of given topics

3.) Be correlated to visual materials

4.) Contain bibliographies reflecting multi-media materials

5.) Be appropriate to levels of learning

6.) Be authoritative, realistic, factual

7.) Be arranged chronologically and/or systematically

8.) Reflect the pluralistic character and culture of the American people

9.) Be free of sexual stereotyping

10.) Represent various ethnic groups

11.) Be relevant to today's world

12.) Represent artistic, historic, and literary qualities

13.) Reflect problems, aspirations, attitudes, and ideals of a society

14.) Be pertinent to the curriculum

15.) Contribute to the objectives of the instructional program

16.) Be appropriate to the level of the user

17.) Represent differing viewpoints on controversial subjects

18.) Provide a stimulus to creativity

19.) Be of acceptable technical quality: clear narration and sound, synchronized pictures and sound

20.) Be readable; typographically well balanced

General criteria which might be applicable to the selection of various pieces of equipment to accompany the materials are:

1.) Physical characteristics

2.) Electrical characteristics

3.) Optical characteristics

4.) Audio characteristics

5.) Transport characteristics

IV. PROCEDURES FOR SELECTION.

In selecting materials for purchase, library media personnel evaluate the existing collection and consult:

reputable, unbiased, professionally prepared selection aids including book lists, special bibliographies, current reviewing media, etc., such as publications of the American Library Association, National Councils of Teachers of English, R. W. Wilson Catalog Series, and the publications of other professional educational organizations.

subject specialists and other educators at all grade levels.

media or curriculum committees, where they may exist, which serve in an advisory capacity in the selection of materials.

In specific areas, the library media person follows procedures such as the following:

gift materials are judged by basic selection standards, and are accepted or rejected by these standards.

multiple copies are purchased as needed.

worn or missing standard items are replaced systematically.

out of date or no longer useful materials are withdrawn from the collection.

CHALLENGED MATERIALS

POLICY AND PROCEDURE.

Occasionally, objections to a selection will be made by the public, despite the care taken to select valuable materials for student and teacher use. The principles of freedom to read and the professional responsibility of the staff must be defended rather than the materials.

If a complaint is made, procedures should be as follows:

1. Be courteous, but make no commitments.

2. Ask the individual lodging the complaint to file objections in writing and offer a prepared form such as a Citizen's Request for Reconsideration of Educational Material, so that a formal complaint may be submitted. (See sample, page 6)

3. The principal and the media personnel review the questioned material.

4. The written complaint, together with reviews and recommendations, is submitted to the superintendent.

5. The superintendent, after reviewing the complaint, and recommendations, and upon consultation with the principal and media personnel, formulates a decision.

6. The superintendent informs the complainant, in writing, of the decision. Copies of the written decision and all pertinent material are forwarded to the school board, the principal and the library media person.

7. If the decision requires further consideration, the superintendent schedules an interview with the complainant, the principal and the library media person.

8. If the issue is not resolved at this level, the complainant may appeal the decision to the school board.

9. The school board may elect to hear the complainant, with the principal and library media person present.

10. A committee may be appointed by the school board specifically to review the particular materials in question.

11. The school board will determine the disposition of the resources in question, based upon the report of the review committee, and the reports previously submitted.

12. The complainant will be informed, in writing, by the school board of its decision. The complainant is further apprised of additional avenues of appeal.

Adapted from American Association of School Librarians: Policies and Procedures for Selection of Instructional Materials.

Maryland State Board of Education: Guidelines for the Review and Selection of Textbooks and Instructional Materials (1976)

CITIZEN'S REQUEST FOR RECONSIDERATION OF LIBRARY MEDIA MATERIALS

(Please fill in the appropriate blanks)

Title_____Book____Periodical____Other____

Author/Producer_____

Publisher/Distributor_____

Request initiated by_____

Address_____

City_____State_____Zip_____Telephone_____

Do you represent:

_____Yourself

_____An organization (name)_____

_____Other group (name)_____

1. To what in the work do you object? Please be specific._____

_____

2. Did you read, view or listen to the entire work?_____

_____

3. What do you feel might be the result of exposure to this work?_____

_____

4. For what age group would you recommend this work?_____

_____

5. What do you believe is the theme of this work?_____

_____

6. Are you aware of professional reviews of this work?_____

_____

7. What disposition would you like made of the work?_____

_____

8. In its place, what work would you recommend that would convey as valuable a picture and perspective of the subject treated?_____

_____

_____
Signature

_____
Date

Additional comments:

Checklist for School Media Advisory Committee's
Reconsideration of Instructional Material -
Nonfiction (Sample)

Title_____
Author_____
A.
A. Purpose
1. What is the overall purpose of the material?_____
_____

2. Is the purpose accomplished?_____Yes_____No.

B. Authenticity
1. Is the author competent and qualified in the field?_____Yes_____No.
2. What is the reputation and significance of the author and publisher/producer in the field?
_____
_____
3. Is the material up-to-date?_____Yes _____No.
4. Are information sources well documented?_____Yes _____No.
5. Are translations and retellings faithful to the original? ____Yes _____No.

C. Appropriateness
1. Does the material promote the educational goals and objectives of the curriculum of District Schools? _____Yes _____No.
2. Is it appropriate to the level of instruction intended?_____Yes _____No.
3. Are the illustrations appropriate to the subject and age levels? _____Yes _____No.

D. Content
1. Is the content of this material well presented by providing adequate scope, range, depth and continuity?_____Yes _____No.
2. Does this material present information not otherwise available? _____Yes ____No.
3. Does this material give a new dimension or direction to its subject?_____Yes _____No.

E. Reviews
1. Source of review_____
Favorably reviewed_____Unfavorably reviewed_____
2. Does this title appear in one or more reputable selection aids? _____Yes _____No. If answer is yes, please list titles of selection aids.
_____
_____

Additional Comments

_____

_____

_____

Recommendation by School Media Advisory Committee for Treatment of Challenged Materials

_____

_____

_____

_____

Date_____

Signature of Media Advisory Review Committee

_____ _____

_____ _____

_____ _____

Checklist for School Media Advisory Committee's Reconsideration of Instructional Material - Fiction and Other Literary Forms (Sample)

Title _____

Author _____

A. Purpose

1. What is the purpose, theme or message of the material? How well does the author/producer/composer accomplish this purpose?

   _____

   _____

   _____

2. If the story is fantasy, is it the type that has imaginative appeal and is suitable for children? _____Yes _____No; for young adults? _____Yes _____No. If both are marked no, for what age group would you recommend?
3. Will the reading and/or viewing and/or listening to material result in more compassionate understanding of human beings? _____Yes _____No.
4. Does it offer an opportunity to better understand and appreciate the aspirations, achievements, and problems of various minority groups? _____Yes _____No.
5. Are any questionable elements of the story an integral part of a worthwhile theme or message? _____Yes _____No.

B. Content

1. Does a story about modern times give a realistic picture of life as it is now? _____Yes _____No.
2. Does the story avoid an oversimplified view of life, one which leaves the reader with the general feeling that life is sweet and rosy or ugly and meaningless? _____Yes _____No.
3. When factual information is part of the story, is it presented accurately? _____Yes _____No.
4. Is prejudicial appeal readily identifiable by the potential reader? _____Yes _____No.
5. Are concepts presented appropriate to the ability and maturity of the potential readers? _____Yes _____No.
6. Do characters speak in a language true to the period and section of the country in which they live? _____Yes _____No.
7. Does the material offend in some special way the sensibilities of women or a minority group by the way it presents either the chief character or any of the minor characters? _____Yes ____No.
8. Is there preoccupation with sex, violence, cruelty, brutality, and aberrant behavior that would make this material inappropriate for children? _____Yes _____No; young adult? _____Yes _____No.

9. If there is use of offensive language, is it appropriate to the purpose of the text for children? _____Yes _____No; for young adults? _____Yes _____No.
10. Is the material free from derisive names and epithets that would offend minority groups? _____Yes _____No; children? _____Yes _____No; young adults? _____Yes _____No.
11. Is the material well written or produced? _____Yes _____No.
12. Does the story give a broader understanding of human behavior without stressing differences of class, race, color, sex, education, religion or philosophy in any adverse way? _____Yes _____No.
13. Does the material make a significant contribution to the history of literature or ideas? _____Yes _____No.
14. Are the illustrations appropriate and in good taste? _____Yes _____No.
15. Are the illustrations realistic in relation to the story? _____Yes _____No.

Additional Comments

_____

_____

_____

_____

_____

Recommendation by School Media Advisory Committee for Treatment of Challenged Materials

_____

_____

_____

_____

_____

Date_____

Signature of Media Advisory Review Committee

_____ _____

_____ _____

_____ _____

HOW LIBRARIES CAN RESIST CENSORSHIP

Libraries of all sizes and types continue to be targets of pressure from groups and individuals who wish to use the library as an instrument of their own tastes and views. The problem differs somewhat between the public library, with a responsibility to present as wide a spectrum of materials as its budget can afford, and the school or academic library, whose collection is designed to support the educational objectives of the institution. Both, however, involve the freedom of the library to meet its professional responsibilities to the whole community.

To combat censorship efforts from groups and individuals, every library should take certain measures to clarify policies and establish community relations. While these steps should be taken regardless of any attack or prospect of attack, they will provide a firm and clearly defined position if selection policies are challenged. As normal operating procedure, each library should:

1. Maintain a definite materials selection policy. It should be in written form and approved by the board of trustees, the school board or other administrative authority. It should apply to all library materials equally.

2. Maintain a clearly defined method for handling complaints. Basic requirements should be that the complaint be filed in writing and the complainant be properly identified before his request is considered. Action should be deferred until full consideration by appropriate administrative authority. (Upon request, the Office for Intellectual Freedom will provide a sample comment form adapted from one recommended by the National Council of Teachers of English.)

3. Maintain lines of communication with civic, religious, educational and political bodies in the community. Participation in local civic organizations and in community affairs is desirable. Because the library and the school are key centers of the community, the librarian should be known publicly as a community leader.

4. Maintain a vigorous public relations program on behalf of intellectual freedom. Newspapers, radio and television should be informed of policies governing materials selection and use, and of any special activities pertaining to intellectual freedom.

Adherence to the practices listed above will not preclude confrontations with pressure groups or individuals but may provide a base from which to counter efforts to place restraints on the library. If a confrontation does occur, librarians should remember the following:

1. Remain calm. Don't confuse noise with substance. Require the deliberate handling of the complaint under previously established rules. Treat the group or individual who complains with dignity, courtesy and good humor. Given the facts, most citizens will support the responsible exercise of professional freedom by teachers and librarians and will insist on protecting their own freedom to read.

2. Take immediate steps to assure that the full facts surrounding a complaint are known to the administration. The school librarian should go through the principal to the superintendent and the school board; the public librarian, to the board of trustees or to the appropriate community administration official; the college or university librarian, to the president and through him to the board of trustees. Present full, written information giving the nature of the complaint and identifying the source.

3. Seek the support of the local press when appropriate. The freedom to read and freedom of the press go hand in hand.

4. Inform local civic organizations of the facts and enlist their support when appropriate. Meet negative pressure with positive pressure.

5. In most cases, defend the principle of the freedom to read and the professional responsibility of teachers and librarians. Only rarely is it necessary to defend the individual item. Laws governing obscenity, subversive material and other questionable matter are subject to interpretation by courts. Responsibility for removal of any library materials from public access rests with this established process.

6. Inform the ALA Office for Intellectual Freedom and other appropriate national and state organizations concerned with intellectual freedom of the nature of the problem. Even though censorship must be fought at the local level, there is value in the support and assistance of agencies outside the area which have no personal involvement. They can often cite parallel cases and suggest methods of meeting an attack.

The principles and procedures discussed above apply to all kinds of censorship attacks and are supported by such groups as the National Education Association, the American Civil Liberties Union, and the National Council of Teachers of English, as well as the American Library Association. While the practices provide positive means for preparing for and meeting pressure group complaints, they serve the more general purpose of supporting the Library Bill of Rights, particularly Article III, which states that: "Censorship should be challenged by libraries in the maintenance of their responsibility to provide public information and enlightenment." Adherence to this principle is especially necessary when under pressure.

(Adopted February 1, 1962; revised January 28, 1972 by the ALA Council.)

SCHOOL LIBRARY BILL OF RIGHTS

The American Association of School Librarians reaffirms its belief in the Library Bill of Rights of the American Library Association. Media personnel are concerned with generating understanding of American freedoms through the development of informed and responsible citizens. To this end the American Association of School Librarians asserts that the responsibility of the school library media center is:

To provide a comprehensive collection of instructional materials selected in compliance with basic written selection principles, and to provide maximum accessibility to these materials.

To provide materials that will support the curriculum, taking into consideration the individual's needs, and the varied interests, abilities, socio-economic backgrounds, and maturity levels of the students served.

To provide materials for teachers and students that will encourage growth in knowledge, and that will develop literary, cultural and aesthetic appreciation, and ethical standards.

To provide materials which reflect the ideas and beliefs of religious, social, political, historical, and ethnic groups and their contribution to the American and world heritage and culture, thereby enabling students to develop an intellectual integrity in forming judgments.

To provide a written statement, approved by the local Boards of Education, of the procedures for meeting the challenge of censorship of materials in school library media centers.

To provide qualified professional personnel to serve teachers and students.

(Approved by American Association of School Librarians Board of Directors, Atlantic City, 1969.)

LIBRARY BILL OF RIGHTS

The Council of the American Library Association reaffirms its belief in the following basic policies which should govern the services of all libraries.

I. As a responsibility of library service, books and other library materials should be chosen for values of interest, information and enlightenment of all people of the community. In no case should library materials be excluded because of the race or nationality or the social, political, or religious views of the authors.

II. Libraries should provide books and other materials presenting all points of view concerning the problems and issues of our times; no library materials should be proscribed or removed from libraries because of partisan or doctrinal disapproval.

III. Censorship should be challenged by libraries in the maintenance of their responsibility to provide public information and enlightenment.

IV. Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.

V. The rights of an individual to the use of a library should not be denied or abridged because of his age, race, religion, national origins or social or political views.

VI. As an institution of education for democratic living, the library should welcome the use of its meeting rooms for socially useful and cultural activities and discussion of current public questions. Such meeting places should be available on equal terms to all groups in the community regardless of the beliefs and affiliations of their members, provided that the meeting be open to the public.

(Adopted June 18, 1948; amended February 2, 1961, and June 27, 1967, by the ALA Council.)

STATEMENT ON LABELING

An Interpretation of the LIBRARY BILL OF RIGHTS

Because labeling violates the spirit of the Library Bill of Rights, the American Library Association opposes the technique of labeling as a means of predisposing readers against library materials for the following reasons:

1. Labeling[1] is an attempt to prejudice the reader, and as such it is a censor's tool.

2. Although some find it easy and even proper, according to their ethics, to establish criteria for judging publications as objectionable, injustice and ignorance rather than justice and enlightenment result from such practices, and the American Library Association must oppose the establishment of such criteria.

3. Libraries do not advocate the ideas found in their collections. The presence of a magazine or book in a library does not indicate an endorsement of its contents by the library.

4. No one person should take the responsibility of labeling publications. No sizable group of persons would be likely to agree either on the types of material which should be labeled or the sources of information which should be regarded with suspicion. As a practical consideration, a librarian who labels a book or magazine might be sued for libel.

5. If materials are labeled to pacify one group, there is no excuse for refusing to label any item in the library's collection. Because authoritarians tend to suppress ideas and attempt to coerce individuals to conform to a specific ideology, the American Library Association opposes such efforts which aim at closing any path to knowledge.

---

[1] "Labeling," as it is referred to in the Statement on Labeling, is the practice of describing or designating certain library materials, by affixing a prejudicial label to them or segregating them by a prejudicial system, so as to predispose readers against the materials.

(Adopted July 13, 1951; amended June 25, 1971, by the ALA Council.)

RESOLUTION ON CHALLENGED MATERIALS

An Interpretation of the LIBRARY BILL OF RIGHTS

WHEREAS, The Library Bill of Rights states that no library materials should be proscribed or removed because of partisan or doctorinal disapproval, and

WHEREAS, Constitutionally protected expression is often separated from unprotected expression only by a dim and uncertain line, and

WHEREAS, Any attempt, be it legal or extra-legal, to regulate or suppress material must be closely scrutinized to the end that protected expression is not abridged in the process, and

WHEREAS, The Constitution requires a procedure designed to focus searchingly on the question before speech can be suppressed, and

WHEREAS, The dissemination of a particular work which is alleged to be unprotected should be completely undisturbed until an independent determination has been made by a judicial officer, including an adversary hearing,

THEREFORE, THE PREMISES CONSIDERED, BE IT RESOLVED, That the American Library Association declares as a matter of firm principle that no challenged library material should be removed from any library under any legal or extra-legal pressure, save after an independent determination by a judicial officer in a court of competent jurisdiction and only after an adversary hearing, in accordance with well-established principles of law.

(Adopted June 25, 1971, by the ALA Council.)

INTELLECTUAL FREEDOM STATEMENT

An Interpretation of the LIBRARY BILL OF RIGHTS

The heritage of free men is ours.

In the Bill of Rights to the United States Constitution, the founders of our nation proclaimed certain fundamental freedoms to be essential to our form of government. Primary among these is the freedom of expression, specifically the right to publish diverse opinions and the right to unrestricted access to those opinions. As citizens committed to the full and free use of all communications media and as professional persons responsible for making the content of those media accessible to all without prejudice, we, the undersigned, wish to assert the public interest in the preservation of freedom of expression

Through continuing judicial interpretations of the First Amendment to the United States Constitution, full freedom of expression has been guaranteed. Every American who aspires to the success of our experiment in democracy--who has faith in the political and social integrity of free men--must stand firm on those Constitutional guarantees of essential rights. Such Americans can be expected to fulfill the responsibilities implicit in those rights.

We, therefore, affirm these propositions:

1. We will make available to everyone who needs or desires them the widest possible diversity of views and modes of expression, including those which are strange, unorthodox or unpopular.

Creative thought is, but its nature, new. New ideas are always different and, to some people, distressing and even threatening. The creator of every new idea is likely to be regarded as unconventional--occasionally heretical--until his idea is first examined, then refined, then tested in its political, social or moral applications. The characteristic ability of our governmental system to adapt to necessary change is vastly strengthened by the option of the people to choose freely from among conflicting opinions. To stifle non-conformist ideas at their inception would be to end the democratic process. Only through continuous weighing and selection from among opposing views can free individuals obtain the strength needed for intelligent, constructive decisions and actions. In short, we need to understand not only what we believe, but why we believe as we do.

2. We need not endorse every idea contained in the materials we produce and make available.

We serve the educational process by disseminating the knowledge

and wisdom required for the growth of the mind and the expansion of learning. For us to employ our own political, moral, or esthetic views as standards for determining what materials are published or circulated conflicts with the public interest. We cannot foster true education by imposing on others the structure and content of our own opinions. We must preserve and enhance the people's right to a broader range of ideas than those held by any librarian or publisher or church or government. We hold that is wrong to limit any person to those ideas and that information another believes to be true, good, and proper.

3. We regard as irrelevant to the acceptance and distribution of any creative work the personal history or political affiliations of the author or others responsible for it or its publication.

A work of art must be judged solely on its own merits. Creativity cannot flourish if its appraisal and acceptance by the community is influenced by the political views or private lives of the artists or the creators. A society that allows blacklists to be compiled and used to silence writers and artists cannot exist as a free society.

4. With every available legal means, we will challenge laws or governmental action restricting or prohibiting the publication of certain materials or limiting free access to such materials.

Our society has no place for legislative efforts to coerce the taste of its members, to restrict adults to reading matter deemed suitable only for children, or to inhibit the efforts of creative persons in their attempts to achieve artistic perfection. When we prevent serious artists from dealing with truth as they see it, we stifle creative endeavor at its source. Those who direct and control the intellectual development of our children--parents, teachers, religious leaders, scientists, philosophers, statesmen--must assume the responsibility for preparing young people to cope with life as it is and to face the diversity of experience to which they will be exposed as they mature. This is an affirmative responsibility that cannot be discharged easily, certainly not with the added burden of curtailing one's access to art, literature, and opinion. Tastes differ. Taste, like morality, cannot be controlled by government, for governmental action, devised to suit the demands of one group, thereby limits the freedom of allothers.

5. We oppose labeling any work of literature or art, or any persons responsible for its creation, as subversive, dangerous, or otherwise undersirable.

Labeling attempts to predispose users of the various media of

communication, and to ultimately close off a path to knowledge. Labeling rests on the assumption that persons exist who have a special wisdom, and who, therefore, can be permitted to determine what will have good and bad effects on other people. But freedom of expression rests on the premise of ideas vying in the open marketplace for acceptance, change, or rejection by individuals. Free men choose this path.

6. We, as guardians of intellectual freedom, oppose and will resist every encroachment upon that freedom by individuals or groups, private or official.

It is inevitable in the give-and-take of the democratic process that the political, moral and esthetic preferences of a person or group will conflict occasionally with those of others. A fundamental premise of our free society is that each citizen is privileged to decide those opinions to which he will adhere or which he will recommend to the members of a privately organized group or association. But no private group may usurp the law and impose its own political or moral concepts upon the general public. Freedom cannot be accorded only to selected groups for it is then transmuted into privilege and unwarranted license.

7. Both as citizens and professionals, we will strive by all legitimate means open to us to be relieved of the threat of personal, economic and legal reprisals resulting from our support and defense of the principles of intellectural freedom.

Those who refuse to compromise their ideas in support of intellectual freedom have often suffered dismissals from employment, forced resignations, boycotts of products and establishments, and other invidious forms of punishment. We perceive the admirable, often lonely, refusal to succumb to threats of punitive action as the highest form of true professionalism: dedication to the cause of intellectual freedom and the preservation of vital human and civil liberties.

In our various capacities, we will actively resist incursions against the full exercise of our professional responsibility for creating and maintaining an intellectual environment which fosters unrestrained creative endeavor and true freedom of choice and access for all members of the community.

We state these propositions with conviction, not as easy generalizations. We advance a noble claim for the value of ideas, freely expressed, as embodied in books and other kinds of communications. We do this in our belief that a free intellectual climate fosters creative endeavors capable of enormous variety, beauty, and usefulness, and thus worthy of support and preservation. We recognize that application of these propositions may encourage the dissemination of ideas and forms of expression that will be frightening or

abhorrent to some. We believe that what people read, view, and hear is a critically important issue. We recognize, too, that ideas can be dangerous. It may be, however, that they are effectually dangerous only when opposing ideas are suppressed. Freedom, in its many facets, is a precarious course. We espouse it heartily.

Adopted by the ALA Council - June 25, 1971

Endorsed by the FREEDOM TO READ FOUNDATION,
Board of Trustees - June 18, 1971

FREE ACCESS TO LIBRARIES FOR MINORS

An Interpretation of the LIBRARY BILL OF RIGHTS

Some library procedures and practices effectively deny minors access to certain services and materials available to adults. Such procedures and practices are not in accord with the LIBRARY BILL OF RIGHTS and are opposed by the American Library Association.

Restrictions take a variety of forms, including, among others, restricted reading rooms for adult use only, library cards limiting circulation of some materials to adults only, closed collections for adult use only, and inter-library loan service for adult use only.

All limitations in minors' access to library materials and services violate Article V of the LIBRARY BILL OF RIGHTS which states that, "The rights of an individual to the use of a library should not be denied or abridged because of his age...". Limiting access to some services and materials to only adults abridges the use of libraries for minors. "Use of the library" includes use of, and access to, all library materials and services.

Restrictions are often initiated under the assumption that certain materials are "harmful" to minors, or in an effort to avoid controversy with parents who might think so. The librarian who would restrict the access of minors to materials and services because of actual or suspected parental objection should bear in mind that he is not in loco parentis in his position as librarian. Individual intellectual levels and family backgrounds are significant factors not accommodated by a uniform policy based upon age.

In today's world, children are exposed to adult life much earlier than in the past. They read materials and view a variety of media

on the adult level at home and elsewhere. Current emphasis upon early childhood education has also increased opportunities for young people to learn and to have access to materials, and has decreased the validity of using chronological age as an index to the use of libraries. The period of time during which children are interested in reading materials specifically designed for them grows steadily shorter, and librarians must recognize and adjust to this change if they wish to maintain the patronage of young people.

The American Library Association holds that it is the parent--and only the parent--who may restrict his children--and only his children--from access to library materials and services. The parent who would rather his child did not have access to certain materials should so advise the child.

The word "age" was incorporated into Article V of the LIBRARY BILL OF RIGHTS as a direct result of a preconference entitled "Intellectual Freedom and the Teenager," held in San Francisco in June, 1967. One recommendation of the preconference participants was, "That free access to all books in a library collection be granted to young people." The preconference generally concluded that young people are entitled to the same access to libraries and to the materials in libraries as are adults and that materials selection should not be diluted on that account.

This does not mean, for instance, that issuing different types of borrowers' cards to minors and adults is, per se, contrary to the LIBRARY BILL OF RIGHTS. If such practices are used for purposes of gathering statistics, the various kinds of cards carry no implicit or explicit limitations on access to materials and services. Neither does it mean that maintaining separate children's collections is a violation of the LIBRARY BILL OF RIGHTS, provided that no patron is restricted to the use of only certain collections.

The Association's position does not preclude isolating certain materials for legitimate protection of irreplaceable or very costly works from careless use. Such "restricted-use" areas as rare book rooms are appropriate if the materials so classified are genuinely rare, and not merely controversial.

Unrestrictive selection policies, developed with care for principles of intellectual freedom and the LIBRARY BILL OF RIGHTS, should not be vitiated by administrative practices which restrict minors to the use of only part of a library's collections and services.

(Adopted by the ALA Council - June 30, 1972)

EXPURGATION OF LIBRARY MATERIALS

An Interpretation of the LIBRARY BILL OF RIGHTS

Library materials are chosen for their value and interest to the community the library serves. If library materials were acquired for these reasons and in accordance with a written statement on materials selection, then to expurgate must be interpreted as a violation of the LIBRARY BILL OF RIGHTS. For purposes of this statement, expurgation includes deletion, excision, alteration or obliteration. By such expurgation, the library is in effect denying access to the complete work and the full ideas that the work was intended to express; such action stands in violation of Article II of the LIBRARY BILL OF RIGHTS which states that "no library materials should be proscribed or removed from libraries because of partisan or doctrinal disapproval."

The acto of expurgation has serious implications. It involves a determination by an individual that it is necessary to restrict the availability of that material. It is, in fact censorship.

When a work is expurgated, under the assumption that certain sections of that work would be harmful to minors, the situation is no less serious. Expurgation of any library materials imposes a restriction, without regard to the rights and desires of all library users.

(Adopted February 2, 1973 by the ALA Council)

REEVALUATING LIBRARY COLLECTIONS*

An Interpretation of the LIBRARY BILL OF RIGHTS

The continuous review of library collections to remove physically deteriorated or obsolete materials is one means to maintain active library collections of current interest to users. Continued re-evaluation is closely related to the goals and responsibilities of libraries and is a valuable tool of collection building. This procedure, however, is sometimes used as a convenient means to remove materials thought to be too controversial or disapproved of by segments of the community. Such abuse of the reevaluation function violates the principles of intellectual freedom and is in opposition to Articles I and II of the LIBRARY BILL OF RIGHTS, which state that:

> As a responsibility of library service, books and other library materials selected should be chosen

*The traditional term "weeding" implying "the removal of a noxious growth," is purposely avoided because of the imprecise nature of the term.

for values of interest, information and enlightenment of all the people of the community. In no case should library materials be excluded because of the race or nationality or the social, political, or religious views of the author.

Libraries should provide books and other materials presenting all points of view concerning the problems and issues of our times; no library materials should be proscribed or removed from libraries because of partisan or doctrinal disapproval.

The American Library Association opposes such "silent censorship," and recommends that libraries adopt guidelines setting forth the positive purposes and principles for reevaluation of materials in library collections.

(Adopted February 2, 1973 by the ALA Council)

RESTRICTED ACCESS TO LIBRARY MATERIALS

An interpretation of the LIBRARY BILL OF RIGHTS

Restricting access of certain titles and certain classes of library materials is a practice common to many libraries in the United States. Collections of these materials are referred to by a variety of names such as "closed shelf," "locked case," "adults only," or "restricted shelf" collections.

Three reason generally advanced to justify restricted access are:

(1) It provides a refuge for materials that belong in the collection but which may be considered "objectionable" by some library patrons;

(2) It provides a means for controlling distribution of materials which allegedly should not be read by those who are not "prepared" for such materials by experience, education, or age;

(3) It provides a means to protect certain materials from theft and mutilation.

Though widely used - and often practical - restricted access to library materials is frequently in opposition to the principles of

intellectual freedom. While the limitation differs from direct censorship activities, such as removal of library materials or refusal to purchase certain publications, it nonetheless constitutes censorship, albeit a subtle form. As a form of censorship, restricted access violates the spirit of the LIBRARY BILL OF RIGHTS in the following ways:

(1) It violates that portion of Article II which states that "...no library materials should be proscribed...because of partisan or doctrinal disapproval."

The word "proscribed," as used in Article II, means "suppressed." Restricted access achieves de facto suppression of certain materials.

Even when a title is listed in the card catalog with a reference to its restricted shelf status, a barrier is placed between the patron and the publication. Because a majority of materials placed in restricted collections deal with controversial, unusual, or "sensitive" subjects, asking a librarian or circulation clerk for them is an embarrassment for patrons desiring the materials. Because restricted collections are often composed of materials which some library patrons consider "objectionable," the potential user is predisposed to thinking of the materials as "objectionable," and is accordingly inhibited from asking for them. Although the barrier between the materials and the patron is psychological, it is nonetheless a tangible limitation on his access to information.

(2) It violates Article V which states that, "The rights of an individual to the use of a library should not be denied or abridged because of his age...."

Limiting access of certain materials to adults only abridges the use of the library for minors. "Use of the library," includes use of, and access to, library materials. Such restrictions are generally instituted under the assumption that certain materials are "harmful" to minors, or in an effort to avoid controversy with parents who might think so.

The librarian who would restrict the availability of materials to minors because of actual or suspected parental objection should bear in mind that he is not in loco parentis in his position as librarian. The American Library Association holds that it is the parent - and only the parent - who may restrict

his children - and only his children - in reading matter. The parent who would rather his child did not read certain materials or certain kinds of materials should so advise the child.*

When restricted access is implemented to protect materials from theft or mutilation, the use of the practice may be legitimate. However, segregation of materials to protect them must be administered with extreme attention to the rationale for restricting access. Too often only "controversial" materials are the subject of such segregation, leading to the conclusion that factors other than theft and multilation were the true considerations. The distinction is extremely difficult to make, both for the librarian and the patron.

Selection policies, carefully developed on the basis of principles of intellectual freedom and the LIBRARY BILL OF RIGHTS, should not be vitiated by administrative practices such as restricted access.

*See also FREE ACCESS TO LIBRARIES FOR MINORS, adopted by the ALA Council, June 30, 1972.

(Adopted February 2, 1973 by the ALA Council)

THE RIGHT TO READ

An open letter to the citizens of our country from the National Council of Teachers of English:

"The worthy fruit of an academic culture is an open mind..."
Charles W. Eliot, "First Inaugural Address,"
Harvard University, October 19, 1869.

"...education should prepare people not just to earn a living but to live a life--a creative, humane, and sensitive life. This means that the schools must provide a liberal, humanizing education. And the purpose of liberal education must be, and indeed always has been, to educate educators--to turn out men and women who are capable of educating their families, their friends, their communities, and most importantly, themselves....Of what does the capacity to educate oneself consist? It means that a person has both the desire and the capacity to learn for himself, to dig out what he needs to know, as well as the capacity to judge what is worth learning. It means, too, that one can think for himself, so that he is dependent on neither the opinions nor the facts of others, and that he uses that capacity to think about his own education, which means to think about his own nature and his place in the universe--about the meaning of life and of knowledge and of the relations between them."

Charles E. Silberman, Crisis in the Classroom: The Remaking of American Education, 1970

"The writer of fiction, if he is serious and conscientious, strives to re-create and illuminate experience. It is not his right to falsify. He has to be honest to his materials. He has to be honest to himself. He operates in the conviction that if anything is important it is truth as he has been led to see it."

A.B. Guthrie, Jr., "The Peter Rabbit Library?"
Nieman Reports, April 1958

"Where suspicion fills the air and holds scholars in line for fear of their jobs, there can be no exercise of the free intellect....A problem can no longer be pursued with impunity to its edges. Fear stalks the classroom. The teacher is no longer a stimulant to adventurous thinking; she becomes instead a pipe line for safe and sound information. A deadening dogma takes the place of free inquiry. Instruction tends to become sterile; pursuit of knowledge is discouraged; discussion often leaves off where it should begin."

Justice William O. Douglas, United States Supreme Court:
Adler v. Board of Education, 1952.

The right to read, like all rights guaranteed or implied within our constitutional tradition, can be used wisely or foolishly. In many ways, education is an effort to improve the quality of choices open to man. But to deny the freedom of choice in fear that it may be unwisely used is to destroy the freedom itself. For this reason, we respect the right of individuals to be selective in their own reading. But for the same reason, we oppose efforts of individuals or groups to limit the freedom of choice of others or to impose their own standards or tastes upon the community at large.

The right of any individual not just to read but to read whatever he wants to read is basic to a democratic society. This right is based on an assumption that the educated and reading man possesses judgment and understanding and can be trusted with the determination of his own actions. In effect, the reading man is freed from the bonds of discovering all things and all facts and all truths through his own direct experiences for his reading allows him to meet people, debate philosophies, and experience events far beyond the narrow confines of his own existence.

In selecting books for reading by young people, English teachers consider the contribution which each work may make to the education of the reader, its aesthetic value, its honesty, its readability for a particular group of students, and its appeal to adolescents. English teachers, however, may use different works for different purposes. The criteria for choosing a work to be read by an entire class are somewhat different from the criteria for choosing works to be read by small groups. For example, a teacher might select John Knowles' A Separate Peace for reading by an entire class, partly because the book has received wide critical recognition, partly because it is relatively short and will keep the attention of many slow readers, and partly because it has

proved popular with many students of widely differing abilities. The same teacher, faced with the responsibility of choosing or recommending books for several small groups of students, might select or recommend books as different as Nathaniel Hawthorne's The Scarlet Letter, Jack Schaefer's Shane, Alexandr Solzhenitsyn's One Day in the Life of Ivan Denisovitch, Pierre Boulle's The Bridge over the River Kwai, Charles Dickens' Great Expectations, or Paul Zindel's The Pigman, depending upon the abilities and interests of the students in each group. And the criteria for suggesting books to individuals or for recommending something worth reading for a student who casually stops by after class are different from selecting material for a class or group. But the teacher selects books; he does not censor them. Selection implies that a teacher is free to choose this or that work, depending upon the purpose to be achieved and the student or class in question, but a book selected this year may be ignored next year, and the reverse. Censorship implies that certain works are not open to selection, this year or any year.

Many works contain isolated elements to which some individuals or groups may object. The literary artist seeks truth, as he is able to see and feel it. As a seeker of truth, he must necessarily challenge at times the common beliefs or values of a society; he must analyze and comment on people's actions and values and the frequent discrepancy between what they purport to live by and what they do live by. In seeking to discover meaning behind reality, the artist strives to achieve a work which is honest. Moreover, the value and impact of any literary work must be examined as a whole and not in part--the impact of the entire work being more important than the words, phrases, or incidents out of which it is made.

Wallace Stevens once wrote, "Literature is the better part of life. To this it seems inevitably necessary to add, provided life is the better part of literature." Students and parents have the right to demand that education today keep students in touch with the reality of the world outside the classroom. Much of classic literature asks questions as valid and significant today as when the literature first appeared, questions like "What is the nature of humanity?" "Why do people praise individuality and practice conformity?" "What do people need for a good life?" and "What is the nature of the good person?" But youth is the age of revolt, and the times today show much of the world in revolt. To pretend otherwise is to ignore a reality made clear to young people and adults alike on television and radio, in newspapers and magazines. English teachers must be free to employ books, classic or contemporary, which do not lie to the young about the perilous but wondrous times we live in , books which talk of the fears, hopes, joys and frustrations people experience, books about people not only as they are but as they can be. English teachers forced through the pressures of censorship to use only safe or antiseptic works are placed in the morally and intellectually untenable position of lying to their students about the nature and condition of mankind.

The teacher must exercise care to select or recommend works for class reading and group discussion which will not embarrass students in discussions with their peers. One of the most important responsibilities of the English teacher is developing rapport and respect among students. Respect for the uniqueness and potential of the individual, an important facet of the study of literature, should be emphasized in the English class. For students to develop a respect for each individual, no matter what his race or creed or values may be, multi-ethnic materials must become a part of the literature program in all schools, regardless of the ethnic composition of the school population. It is time that literature classes reflect the cultural contributions of many minority groups in the United States, just as they should acquaint students with contributions from the peoples of Asia, Africa, and Latin America.

What a young reader gets from any book depends both on the selection and on the reader himself. A teacher should choose books with an awareness of the student's interests, his reading ability, his mental and emotional maturity, and the values he may derive from reading. A wide knowledge of many works, common sense, and professional dedication to students and to literature will guide the teacher in making his selections. The community that entrusts students to the care of an English teacher should also trust that teacher to exercise professional judgment in selecting or recommending books.

The Threat to Education

Censorship leaves students with an inadequate and distorted picture of the ideals, values, and problems of their culture. Writers may often be the spokesmen of their culture, or they may stand to the side attempting to describe and evaluate that culture. Yet, partly because of censorship or the fear of censorship, many writers are ignored or inadequately represented in the public schools, and many are represented in anthologies not by their best work but by their "safest" or "least offensive" work.

The censorship pressures receiving the greatest publicity are those of small groups who protest the use of a limited number of books with some "objectionable" realistic elements, such as *Brave New World*, *Lord of the Flies*, *Catcher in the Rye*, *The Stranger*, *Johnny Got His Gun*, *The Assistant*, *Catch-22*, *Soul on Ice*, or *Stranger in a Strange Land*. The most obvious and immediate victims are often found among our best and most creative English teachers, those who have ventured outside the narrow boundaries of conventional texts. Ultimately, however, the real victims are the students, denied the freedom to explore ideas and pursue truth wherever and however they wish.

Great damage may be done by book committees appointed by national or local organizations to pore over anthologies, texts, library books, and paperbacks to find sentences which advocate, or seem to advocate, causes or concepts or practices these organizations condemn. As a result, some publishers, sensitive to possible objections, carefully exclude sentences or selections that might conceivably offend some group, somehow, sometime, somewhere.

Many well-meaning people wish to restrict reading materials in schools to books that do not mention certain aspects of life they find offensive: drugs, profanity, Black Power, anti-war marches, smoking, sex, racial unrest, rock music, politics, pregnancy, school dropouts, peace rallies, drinking, Chicano protests, or divorce. Although he may personally abhor one or more of these facets of modern life, the English teacher has the responsibility to encourage students to read about and reflect on many aspects, good and bad, of their own society and of other cultures.

The English Teacher's Purposes and Responsibilities

The purpose of education remains what it has always been in a free society: to develop a free and reasoning human being who can think for himself, who understands his own and, to some extent, other cultures, who lives compassionately and cooperatively with his fellow man who respects both himself and others, who has developed self-discipline and self-motivation and exercises both, who can laugh at a world which often seems mad, and who can successfully develop survival strategies for existence in that world.

The English teacher knows that literature is a significant part of the education of man, for literature raises problems and questions and dilemmas that have perplexed and intrigued and frustrated man since the dawn of time. Literature presents some solutions to complex problems and some answers to abiding questions, perhaps incomplete but the best we have found. Even more important, literature continues to raise questions man can never wholly answer: What is the relationship between power and moral responsibility? Why does the good man sometimes suffer and the evil man sometimes go untouched by adversity? How can man reconcile the conflict of duty between what he owes society and what he owes his own conscience? The continued search for answers, tentative as they must prove, is a necessary part of the educated man's life, and the search for answers may in part be found through reading.

Aware of the vital role of literature in the education of mankind, the English teacher has unique responsibilities to his students and to adults in the community. To his students, he is responsible for knowing many books from many cultures, for demonstrating a personal commitment to the search for truth through wide reading and

continual critical questioning of his own values and beliefs, for respecting the unique qualities and potential of each student, for studying many cultures and societies and their values, and for exhibiting the qualities of the educated man. To adults, he is responsible for communicating information about his literature program; for explaining, not defending, what books he uses with what students, for what reasons, and with what results; and for communicating the necessity of free inquiry and the search for truth in a democratic society and the dangers of censorship and repression.

The Community's Responsibility

American citizens who care about the improvement of education are urged to join students, teachers, librarians, administrators, boards of education, and professional and scholarly organizations in support of the students' right to read. Only widespread and informed support in every community can assure that

enough citizens are interested in the development and maintenance of a superior school system to guarantee its achievement;

malicious gossip, ignorant rumors, and deceptive letters to the editor will not be circulated without challenge and correction;

newspapers will be convinced that the public sincerely desires objective school news reporting, free from slanting or editorial comment which destroys confidence in and support for schools;

the community will not permit its resources and energies to be dissipated in conflicts created by special interest groups striving to advance their ideologies or biases; and

faith in democratic traditions and processes will be maintained.

(Permission to reproduce the above statement on "The Right to Read" is hereby granted by the National Council of Teachers of English. Separately printed statements may be obtained from NCTE, 1111 Kenyon Road, Urbana, Illinois 61801, 20 for $1.15 or $.04 each in quantities of 100 or more.)

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
DIVISION OF INSTRUCTION
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SUGGESTIONS FOR THE SELECTION OF INSTRUCTIONAL MATERIALS BY LOCAL SCHOOL BOARDS AND SCHOOL PERSONNEL

INTRODUCTION

The selection and adoption of educational materials is one of the school's most important and difficult tasks. Professional educators feel strongly about their responsibility to provide the highest quality resources, representing a multiplicity of attitudes and ideologies. At the same time, they are aware that their choices may be challenged. For these reasons, it is the duty of each school board to develop a policy statement which will assist in dealing with the selection process and reviewing of resources which become controversial.

GENERAL CRITERIA

The policy should state that the overall obligation of the school and the instructional materials which it uses is to implement, enrich and support the local educational program. Responsibility and accountability for the selection of instructional materials rests with the local school board.

The following are general criteria recommended for consideration in selection of instructional materials:

1. To provide materials that will enrich and support the curriculum, taking into consideration the varied interest, abilities, maturity levels and learning modes of the students served.
2. To provide materials that will stimulate growth in factual knowledge, literary appreciation, aesthetic values and ethical standards.
3. To provide a background of information which will enable students to make intelligent judgements in their daily lives.
4. To provide materials on opposing sides of controversial issues so that young citizens may develop, under guidance, the practice of critical analysis of all media of communication.
5. To provide materials representative of the contributions made by both sexes and religious, ethnic and cultural groups to the American Heritage.
6. To place principle above personal opinion and reason above prejudice in the objective selection of materials of the highest quality in order to assure a comprehensive collection appropriate for the users of the library media center.

RESPONSIBILITY FOR SELECTION

Since the school board holds ultimate responsibility for all educational matters, it is recommended that it assign responsibility for selection of materials to a professionally trained person through the superintendent. This person should solicit recommendations or suggestions for additions from school staff and students. All materials proposed for acquisition should be evaluated. The evaluation process should be systematic. The learning resources should reflect all the concerns and complexities of the community in which they are to be used. Rules, processes and responsibilities in selection should be clearly delineated.

Recommendations should be made with knowledge of the school curriculum. Each item should be judged on its authenticity and content. Specific criteria to identify in a policy statement should include:

A. Content
   1. contribution to intelligent thinking
   2. appeal to students
   3. relationship to course of study
   4. organization
   5. style of writing
   6. vocabulary
   7. reading level

B. Physical features
   1. format, including index and page of contents
   2. general attractiveness
   3. durability
   4. appropriateness of medium to content

REVIEWING CHALLENGED MATERIALS

When selected materials are questioned, a written review policy is the proper means for dealing fairly with everyone. Some points to consider are:

a. The nature of the objection may be clearer if stated in writing.
b. Criticism should be made known to the school personnel involved including the superintendent and the school board.
c. An efficient review procedure should be followed which will provide an early decision as to whether or not challenged materials should be removed.

Suggested follow up procedure should be specific. Individuals responsible should consider the following for possible inclusion:

1. examining the questioned material
2. rechecking professional reviews
3. weighing values and concerns
4. reaching consensus
5. preparing a written report

In summary, three measures will do much to protect intellectual freedom and assist in the systematic review of resources which become controversial. These include:

A. develop a written media selection policy
B. have a clearly defined plan including a chain of authority for handling complaints
C. establish lines of communication with local civic, religious and political agencies and with the news media to assure accurate reporting of committee decisions

Suggested sources of information for local school boards and administrators in the development of selection policies and procedures:

Censorship: The Challenge to Freedom in the Schools, American Association of School Administrators, Arlington, Virginia, 1975.

Guidelines for the Review and Selection of Textbooks and Instructional Materials, Maryland State Department of Education, Baltimore, 1976.

Policies and Procedures for Selection of Instructional Materials, American Association of School Librarians, Chicago, 1976.

Selection Guidelines: School Library Resources, Textbooks, Instructional Material, State Education Department, Albany, NY, 1976.

Selection of Instructional Materials, A Model Policy and Rules, Department of Public Instruction, Des Moines, Iowa, 1975.

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Part II

Legal precedents in the area of intellectual freedom

INTRODUCTION

The following case summaries and quotations provide the reader with a working knowledge of important court decisions in the area of intellectual freedom. The cases are frequently cited in judicial proceedings, and have proven to be precedent-setting. They reflect differing judicial viewpoints regarding the individual's right of access to information.

All cases cover a wide range of circumstances, but each in some way relates to the violation of or infringement upon the constitutional guarantees of the First and Fourteenth Amendments. These two Bill of Rights' provisions serve as the cornerstone in the defense of intellectual freedom.

The material, arranged in three sections appears in chronological order. The first section describes cases originating in states other than New Hampshire; the second describes cases from New Hampshire only; the third contains relevant quotations from other cases frequently cited in the preceding decisions.

The appendix following is a copy of the State of New Hampshire obscenity statute.

The bibliography cites additional sources related to legal aspects of intellectual freedom.

STATE AND FEDERAL CASES

Meyer v. Nebraska 262 US 390 June 4, 1923

A teacher in a parochial school was prohibited from teaching a ten year old student German in accordance with a Nebraska statute forbidding the teaching of a foreign language below the eighth grade. The U.S. Supreme Court overruled the lower court holding that the statute violated the teacher's right to academic freedom and restricted the parents' duty to provide his child with an education suitable to his station in life, both rights protected under the First and Fourteenth Amendments. The state could not restrict the scope of the educational process which the Federal Constitution had defined.

Reversed and remanded.

West Virgina State Board of Education v. Barnette
319 US 624 June 14, 1943

The U.S. Supreme court struck down the W. Va. State Board of education's requirement that all students salute the flag of the U.S. while reciting a pledge of allegiance under penalty of expulsion. It held that such a requirement transcended constitutional limitations and invaded the sphere of intellect and spirit which the First and Fourteenth Amendments are designed to protect from official control. Justice Jackson stated:

> The Fourteenth Amendment as now applied to the States protects the citizen against the state itself and all its creations--Board of Education not excepted....That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes. (319 US 637)

Reversed and remanded.

Roth v. United States. 354 U.S. 476. June 24, 1957.

Mr. Roth, a bookseller in New York City, dealt in books, photographs, and magazines. He was convicted by jury in the District Court for the Southern District of New York on four counts of a twenty-six count indictment charging him with the mailing of obscene books and advertising materials, in violation of Federal obscenity statutes. He appealed the decision of the lower court. The dispositive question before the Supreme Court was the issue of whether or not obscenity was to be considered utterance within the area of speech and press as protected by the First Amendment. Mr. Justice Brennan delivered the opinion of the Court:

> The guaranties of freedom of expression in effect in 10 of the 14 states which by 1792 has ratified the Constitution, gave

no absolute protection for every utterance. Thirteen of the fourteen states provided for the prosecution of libel, and all of these states made either blasphemy, or profanity, or both, statutory crimes. As early as 1712, Massachusetts made it criminal to publish 'any filthy, obscene, or profane song, pamphlet, libel, or mock sermon.' in imitation or mimicking of religious services. In light of this history, it is apparent that the unconditional phrasing of the First Amendment was not intended to protect every utterance.

Mr. Justice Douglas, dissenting, said:

By these standards punishment is inflicted for thoughts provoked, not for overt acts nor antisocial conduct....The test of obscenity that the Court endorses today gives the censor free range over a vast domain. To allow the State to step in and punish mere speech or publication that the judge or jury thinks has an undesirable impact on thoughts, but that is not shown to be part of unlawful action is drastically to curtail the First Amendment....The absence of dependable information on the effect of obscene literature on human conduct should make us wary. It should put us on the side of protecting society's interest in literature, except and unless it can be said that the particular publication has an impact on action that the government can control.

The test that suppresses a cheap tract today can suppress a literary gem tomorrow. All it need do is incite a lascivious thought or arouse a lustful desire. The list of books that judges or juries can place in that category is endless.

I would give the broad sweep of the First Amendment full support. I have the same confidence in the ability of our people to reject noxious literature as I have in their capacity to sort out the true from the false in theology, economics, politics, or any other field.

Convictions sustained.

Jacobellis v. State of Ohio. 378 U.S. 184. June 22, 1964

Mr. Nico Jacobellis was convicted by the district court, the intermediate appellate court, and the Supreme Court of Ohio, for the possession and exhibition of an obscene film in violation of Ohio Revised Code 2905.34. The dispositive question was whether or not the film (Les Amants) was obscene under the law. Mr. Justice Brennan delivered the opinion of the Court:

Motion pictures are within the ambit of the Constitutional guarantees of freedom of speech and of the press....Since it is only 'obscenity' that is excluded from the constitutional protection, the question whether a particular work is obscene necessarily implicates an issue of constitutional law.

It is true that local communities throughout the land are in fact diverse, and that in cases such as this one, the court is confronted with the task of reconciling the rights of such communities with the rights of individuals. Communities vary, however, in many respects other than their toleration of alleged obscenity and such variences have never been considered to require or justify a varying standard for app ication of the Federal Constitution.

Convictions reversed.

Memoirs v. Massachusetts 383 U.S. 413. March 21, 1966

The book, John Cleland's Memoirs of a Woman of Pleasure, commonly known as Fanny Hill, was judged to be obscene by civil equity action, and as such was not granted protection under the First Amendment. This decision was affirmed by the Supreme Judicial Court of Massachusetts. Mr. Justice Brennan delivered the opinion of the Court:

We defined obscenity in Roth in the following terms: 'Whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.' 354 U.S. at 489. Under this definition, as elaborated in subsequent cases, three elements must coalesce: It must be established that (a) the dominant them of the material taken as a whole appeals to a prurient interest in sex; (b) the material is patently offensive because if affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value....Each of the three federal constitutional criteria is to be applied independently: the social value of the book can neither be weighed against nor cancelled by its prurient appeal or patent offensiveness. Hence, even on the view of the court below that Memoirs possessed only a modicum of social value, its judgement must be reversed as being founded on an erroneous interpretation of a federal constitutional standard.

Conviction reversed.

Redrup v. State of New York. 386 U.S. 767. May 8, 1967

Mr. Robert Redrup, a clerk at a New York City newsstand, was charged and convicted in a New York City court for violations of the New York Penal Law 1141(1). The conviction was sustained upon appeal. Charges stemmed from the sale (by Redrup) of two paperback books to a plain-clothesman who had requested them by title from a rack. The lower courts considered the books to be obscene. In a decision delivered simultaneously with those of

Austin v. Kentucky and Gent et al v. Arkansas, the decisions of the lower courts on these cases were reversed. The Supreme Court held that the materials could not legally be judged obscene by the states, rendering further consideration of the issues unnecessary. The opinion of the Court:

> A State may not constitutionally inhibit the distribution of literary material as obscene unless '(a) the dominant theme of the material taken as a whole appeals to a prurient interest in sex; (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value'. Memoirs v. Massachusetts, 383 U.S. 413,418,419.... We have concluded in short, that the distribution of the publications in each of these cases is protected by the First and Fourteenth Amendments from governmental suppression....

Conviction reversed.

In re Gault. 387 U.S. 1. May 15, 1967

Gerald Gault, aged 15, was taken into custody at the request of a neighbor, and was charged with making lewd telephone calls. During hearings on the incident, no records were kept, and the complainant was not present. Legal representation for Gault was neither provided nor suggested. As a result of the hearings, Gerald Gault was committed as a juvenile delinquent to the State Industrial School until his 21st birthday. Mr. Justice Fortas delivered the opinion of the court:

> The essential difference between Gerald's case and a normal criminal case is that safeguards available to adults were discarded in Gerald's case. The summary procedure as well as the long commitment was possible because Gerald was 15 years of age instead of over 18....The history of the juvenile justice movement has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure.... Failure to observe the fundamental requirements of due process has resulted in instances, which might have been avoided, of unfairness to individuals and inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy....

Conviction reversed.

Ginsberg v. New York. 390 U.S. 629. April 22, 1968

Mr. Sam Ginsberg was convicted of selling "girlie" magazines to a sixteen-year-old boy in violation of section 484-6 of the New York Penal Code. The dispositive question before the Court

was whether or not the State of New York might accord minors a more restricted right to "sex materials" than it did to adults. Mr. Justice Harlan delivered the opinion of the Court:

> The First Amendment guarantees liberty of human expression in order to preserve in our Nation what Mr. Justice Holmes called a 'free trade in ideas'. To that end, the Constitution protects more than just a man's freedom to say or write or publish what he wants. It seems as well the liberty of each man to decide for himself what he will read, and to what he will listen. The Constitution guarantees, in short, a society of free choice. Such a society presupposes the capacity of its members to choose.
>
> I think a State may permissibly determine that... a child ... is not possessed of that full capacity for individual choice which is the presumption of First Amendment guarantees.

Mr. Justice Douglas, dissenting, said:

> For there is a view held by many that the so-called 'obscene' book or tract or magazine has a deleterious effect upon the young, although I seriously doubt the wisdom of trying by law to put the fresh, evanescent natural blossoming of sex in the category of 'sin'...As I read the First Amendment, it was designed to keep the State and the hands of all state officials off the printing presses of America and off the distribution systems for all printed literature....
>
> Censors are, of course, propelled by their own neuroses.

Conviction sustained.

Epperson v. Arkansas 393 US 97 November 12, 1968

A Public school biology teacher challenged the Arkansas statute prohibiting the teaching of the Darwinian theory of evolution. Justice Fortas reversed the Arkansas Supreme Court which held that the statute was an excercise of the state's power to specify the curriculum in its public schools.

Fortas held that the statute was contrary to the mandate of the First Amendment and in violation of the Fourteenth Amendment as conflicting with the constitutional prohibition of state laws respecting an establishment of religion or prohibiting the free exercise thereof. Justice Fortas stated:

> There is and can be no doubt that the First Amendment does not permit the State to require that teaching and learning must be tailored to the principles or prohibitions of any religious sect or dogma. (393 US 105)

Reversed and remanded.

Tinker v. Des Moines 393 US 503 February 24, 1969

Three students were suspended from school for wearing armbands to publicize their objections to the hostilities in Vietnam. Justice Fortas held that the wearing of armbands was not disruptive conduct and was closely akin to pure speech which entitled them to comprehensive protection under the First Amendment and that school authorities by banning armbands violated the students' rights of free speech. The U.S. Supreme Court ruled in favor of the defendants.

Reversed and remanded.

Keefe v. Geanakos 418 F.2d 359 November 12, 1969

Mr. Keefe, a tenured high school teacher and English Department Chairman for grades 7-12 of the Ipswich, Mass., public schools sought to enjoin a school committee meeting from voting on his discharge. The U.S. District Court for the District of Mass. refused a temporary injunction. On the plaintiff's request for temporary injunction pending determination of appeal the Court of Appeals held that since the request raised the ultimate issue of appeal and was extensively briefed and argued the District Court's order should be reversed and cause remanded. He ruled that the word which the teacher, Keefe, uttered during classroom discussion of an article* dealing with youthful protest was used in the article merely as a superlative of opprobrium, and the word, a vulgar term for an incestuous son, could be found in no less than five books in the school library.

The Circuit Court's decision indicates that it lent support to the plaintiff's position (but would not rule on its feeling that it was a case for action under local rule) that his conduct was within his competence as a teacher, as a matter of academic freedom protected under the First Amendment whether the defendants approved of it or not, and that he had been given inadequate prior warning that his actions would be considered improper. Justice Aldrich stated:

> We, of ourse, agree with the defendants that what is to be said or read to students is not to be determined by obscenity standards for adult consumption. At the same time, the issue mus be one of degree. A high school senior is not devoid of all discrimination or resistance. Furthermore, as in all other instances, the offensive language and the particular propriety or impropriety is dependant on the circumstances of the utterances. (418 F.2d 362)

Reversed and remanded.

*Robert Lifton, "The young and the old," Atlantic Monthly, September 1969.

In re Winship 397 US 358 March 31, 1970

In juvenile proceedings in New York Family Court, it was found that Samuel Winship, a twelve year old boy had stolen money. The judge acknowledged that pursuant to a New York state statute his determination was based on a preponderance of evidence, and rejected the contention that due process required proof beyond a reasonable doubt. An order which placed Winship in training school subject to confinement for as long as six years was affirmed without opinion by the Appellate Division of the New York Supreme Court and the New York Court of Appeals then affirmed, expressly sustaining the constitutionality of the statute authorizing determination based on a preponderance of the evidence.

On appeal the U.S. Supreme Court reversed. Justice Brennan held that 1) the due process clause protected an accused in a criminal prosecution against conviction except upon proof beyond a reasonable doubt; 2) although the Fourteeth Amendment did not require that a juvenile deliquency hearing conform with all the requirements of a criminal trial, nevertheless, the due process clause required application during the juvenile hearing of essentials of due process and fair treatment; and 3) thus juveniles, like adults, were constitutionally entitled to proof beyond a reasonable doubt during the adjudicatory stage when the jury was charged with an act which would constitute a crime if committed by an adult. Justice Brennan Stated:

> (Judicial) intervention...cannot take the form of subjecting the child to the stigma of a finding that he violated a criminal law and to the possibility of institutional confinement on proof insufficient to convict him were he an adult (397 US 377)

Reversed.

Parducci v. Rutland 316 F.Supp. 352 June 9, 1970

Ms. Parducci, a first year teacher in the Montgomery County, Alabama public shool system brought suit against the school officials for damages and injunctive relief claiming that her dismissal was in violation of her constitutional rights. The Alabama District Court held that since public school officials failed to show either that the assignment of a particular short story, Kurt Vonnegut's "Welcome to the Monkey House," was inappropriate reading for juniors in a high school English class or that it created a significant disruption to educational process of the school, dismissal of Ms. Parducci because of such assignment constituted an unwarranted invasion of her First Amendment right to academic freedom.

Justice Johnson ruled that she be reinstated and at the same time cautioned against the school's lack of a selection policy to protect its teachers:

....we are concerned not merely with vague standards, but with the total absence of standards. When a teacher is forced to speculate as to what conduct is permissible and what conduct is proscribed, he is apt to be overly cautious and reserved in the classroom. Such a reluctance on the part of the teacher to investigate and experiment with new and different ideas is anathema to the entire concept of academic freedom. (316 F.Supp. 357)

Judgment for the plaintiff.

Wisconsin v. Yoder 406 US 205 May 15, 1972

The defendants, who were members of the Amish faith, refused to send their children, aged 14 and 15, to public school after the children had completed the eighth grade. In Green County Court, Wisc. the defendants were convicted for violating Wisconsin's compulsory school attendance law requiring children to attend school until the age of sixteen. The Wisconsin Circuit Court affirmed the convictions, but the Wisconsin Supreme Court, sustaining that the defendants' claims that their First Amendment right to free exercise of religion had been violated, reversed the convictions.

On certiorari, the U.S. Supreme Court affirmed. Chief Justice Burger held that 1) secondary schooling substantially interferred with the religious development of the Amish child and his integration into Amish way of life; 2) foregoing two years of additional schooling would not impair their physical or mental health or result in an inability to be self supporting; and 3) since it was the parents who were subject to prosectuion for failing to send their children to school, and since they were not acting against their children's wishes, it was the parents' right of the exercise of religion not the children's rights which had to determine Wisconsin's power to impose criminal penalties on the parent.

Justice Douglas dissented:

If a parent keeps his child out of school beyond the grade school, then the child will be forever barred from entry into the new and amazing world of diversity that we have today. The child may decide that that is the preferred course, or he may rebel. It is the student's judgment, not his parents', that is essential if we are to give full meaning to what we have said about the Bill of Rights and of the right of students to be masters of their own destiny. If he is harnessed to the Amish way of life by those in authority over him and if his education is truncated, his entire life may be stunted and deformed. (406 US 245)

Affirmed.

Miller v. California 413 US 15 June 21, 1973

After a jury trial in a California state court, the defendant, who had mailed unsolicited avertising brochures containing pictures and drawings explicitly depicting sexual activities, was convicted of violating a California statute making it a misdemeanor to knowingly distribute obscene matter. The state prosecution challenged the notion of a national standard for obscenity by instructing the jury to apply contemporary community standards of the state in determining whether the materials were obscene. On appeal, the Appellate Department, Superior Court of California affirmed.

On appeal, the U.S. Supreme Court vacated and remanded. Justice Burger held that 1) obscene material was not protected by the First Amendment; 2) the proper First Amendment standards to be applied by the states in determining whether particular material was obscene and subject to regulation, were a) the average person, applying contemporary community standards, would find that the work, taken as a whole, appealed to the prurient interest, b) whether the work depicted or described in a patently offensive way, sexual conduct specifically defined by the applicable state law, as written or authoritatively construed, and c) whether the work, taken as a whole, lacked serious literary, artistic, political, or scientific value; 3) there was no requirement that the material must be shown to be "utterly without redeeming social value;" 4) the requirement that state law, as written or construed, must specifically define the sexual material proscribed, provided fair notice as to what public and commercial activities would bring prosecution, and 5) obscenity was to be determined by applying "contemporary community standards," not "national standards."

Chief Justice Burger stated:

> Under a national Constitution, fundamental First Amendment limitations on the powers of the States do not vary from community to community, but this does not mean that there are, or should or can be, fixed, uniform national standards of precisely what appeals to the "prurient interests" or is "patently offensive." These are essentially questions of fact, and our nation is simply too big and too diverse for this Court to reasonably expect that such standards could be articulated for all 50 states in a single formulation, even assuming the prerequisite consensus exists... To require a State to structure obscenity proceedings around evidence of a national "community standard" would be an exercise in futility. (413 US 30)

Vacated and remanded.

Minarcini v. Strongsville City School District
514 F.2nd. 577 August 30, 1976

The parents of five public high school students filed a class action suit against the Strongsville, Ohio City School District, the members of the Board of Education and the Superintendent of Schools. They claimed that the school board had violated the students' First and Fourteenth Amendment rights by disregarding the recommendation of faculty and refusing to approve Joseph Heller's Catch 22 and Kurt Vonnegut's God Bless you, Mr. Rosewater as texts or library books, ordering Vonnegut's Cat's Cradle and Heller's Catch 22 to be removed from the library and issuing resolutions which served to prohibit teacher and student discussion of these books in class or their use as supplemental reading.

The Sixth District Court of Appeals, Ohio found no constitutional violation in the Board of Education's exercise of curriculum and textbook control as empowered by the Ohio statute and reaffirmed the state and local authorities' control of public education.

However, the court disagreed with the lower court's ruling with respect to the removal of certain books from the library. Justice Edwards stated:

> A library is a storehouse of knowledge. When created for a public school it is an important privilege created by the state for the benefit of the students in the school. That privilege is not subject to being withdrawn by succeeding school boards whose members might desire to "winnow" the library for books the content of which occasioned their displeasure or disapproval...
>
> Neither the State of Ohio nor the Strongsville School Board was under any federal constitutional compulsion to provide a library for the Strongsville High School or to choose any particular books. Once having created such a privilege for the benefit of its students, however, neither body could place conditions on the use of the library which were related solely to the social or political tastes of school board members... A public school library is also a valuable adjunct to classroom discussion. If one of the English teachers considered Joseph Heller's Catch 22 to be one of the more important modern American novels, we assume that no one would dispute that the First Amendment protection of academic freedom would protect both his right to say so in class and his students' right to hear him and to find and read the book.
>
> (514 F2d. 577)

In the third part of his opinion Judge Edwards agreed with the lower court that the First Amendment right of academic

freedom for the Strongsville teachers had not been violated. The Board of Education never directed the faculty not to refer to any particular books in classroom teaching.

Vacated and reversed.

Minarcini v. Strongsville p.2

The Sixth Circuit Court of Appeals affirmed the judgement of the District Court in supporting the Board of Education's right to approve and purchase certain textbooks and in denying that any teacher's right of academic freedom had been abridged. The court vacated and reversed the District Court's judgment with respect to the arbitrary removal of library books as violative of the First Amendment rights of the plaintiffs.

NEW HAMPSHIRE CASES

Kidder v. Chellis. 59. N.H. 473. December, 1879.

Suit was brought in the New Hampshire Supreme Court by Kidder, a student in the Enfield, N.H. district school where Chellis was the schoolmaster. Under the curriculum established by the defendant, the plaintiff was to be prepared to deliver a speaking exercise on a specified date; he was not prepared, and further refused to do so at any time in the future. Kidder was then suspended from the school until such time as he was prepared to fulfill the assignment. Kidder stipulated that he was acting at the direction of his parents. Judge Smith delivered the opinion of the Court:

> The power of each parent to decide the question what studies the scholars should pursue, or what exercises they should perform, would be a power of disorganizing the school, and practically rendering substantially useless. However, judicious it may be to consult the wishes of the parents, the disintegrating principle of parental authority to prevent all classification and destroy all system in any school, public or private, is unknown to the law.

For the defendant.

State v. Jackson. 71 N.H. 552. December 4, 1902

Mr. Jackson, upon concluding that continued school attendance would further injure the ill health of his daughter, Alice, removed her from the district school at Tamworth, N.H. He did not seek

an excuse from attendance from the School Board, nor did he provide Alice with other means of receiving academic instruction. The State of New Hampshire brought suit against him under P.S., c.93 s.14, Laws 1901, c.61, s.1. Judge Remick delivered the opinion of the Court:

> For the diffusion of knowledge and learning through the community, the legislature have the undoubted right, as against the mere will and pleasure of the parent, to require him to send his child to school.... But, upon this question of reasonable necessity, he would be entitled to the judgement of his peers. A parent cannot be required to imperil the life of his child by delays incident to an application to the school board, before he can lawfully do what is apparently reasonably necessary for its protection.

For the defendant.

Chaplinsky v. New Hampshire. 315 U.S. 568. March 9, 1942.

Chaplinsky, a member of the Jehovah's Witnesses, was convicted in municipal court at Rochester, N.H., for violation of the Public Laws of New Hampshire, 378 section 2, on the grounds that, in a public place, he directed the following words to the complainant: "You are a God damned racketeer" and "a damned Fascist and the whole government of Rochester are Fascists or agents of Fascists," these words being offensive and derisive words and names. He appealed the conviction on the grounds that the New Hampshire statute was invalid under the First and Fourteenth Amendments. Mr. Justice Murphy delivered the opinion of the Court:

> It is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words -- those which by their very nature inflict injury or tend to incite an immediate breach of the peace. . We are unable to say that the limited scope of the statute as thus construed contravenes the Constitutional right of free expression

For the plaintiff.

Vail et al v. Board of Education of Portsmouth School et al. 354 F. Supp. 592. February 21, 1973.

Calvan Vail and other members of the student body at Portsmouth High School brought a class action civil suit against the Portsmouth School Board and others, on the grounds that they

were deprived, under the cover of state law, of their rights under the First and Fourteenth Amendments. Vail and several other students at Portsmouth High School had distributed issues of the Strawberry Grenade magazine, and had sought to engage as an assembly speaker a member of the Socialist Workers Party who was then a candidate for a national political office. As these activities were contrary to school policy, the students were suspended from the school. Three dispositive questions were before the Court: 1. Did the Portsmouth School Board's rule forbidding the distribution of non-school related and sponsored written materials within Portsmouth schools and on school grounds for a distance of 200' from the school building violate students' rights under the First and Fourteenth Amendments? (2) Did the Portsmouth High School policy regarding outside speakers violate the students' rights under the First and Fourteenth Amendments? (3) Did the suspension of the above-mentioned students violate their rights under the due process clause of the Fourteenth Amendment?

The district court held that the school board regulation concerning distribution of printed materials was unconstitutional, and that student suspensions under such a rule could not stand. The Court further held that the school board would be required to comply with due process requirements with regard to suspension or expulsion of students from school. Judge Bownes delivered the opinion of the Court:

> In order for the State, in the person of school officials, to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly, where there is no finding and no showing that engaging in the forbidden conduct would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school, the prohibition cannot be sustained....If the school provides a forum for outside speakers, as Portsmouth High School has done, it must do so in a manner consistent with constitutional principles. Access to the podium must be permitted without discrimination. It is not for the school to control the influence of a public forum by censoring the ideas, the proponents, or the audience. The right of a student to hear a speaker cannot be left to the discretion of school authorities on a pick and choose basis. Freedom of speech and of assembly require that outside speakers be fairly selected and that equal time be given to opposing viewpoints.

For the plaintiff.

State v. Harding. 114 N.H. 335. May 31, 1974

The State charged the defendant with the illegal sale of three allegedly obscene magazines and one allegedly obscene book (Girls Who Seduce Dogs). The defendant then filed a motion to dismiss on the grounds that the N.H. obscenity statute, RSA 571-A:2 (Supp. 1972), was unconstitutional in view of Miller v. California 413 U.S. 15 (1973), and other related Supreme Court cases. The trial court reserved and transferred without ruling on the following questions: 1. Is RSA 571-A:2 (Supp. 1972) unconstitutional in view of recent Supreme Court cases? 2. If the statute is constitutional, what standards are to be applied to the determination of obscenity? 3. If the statute is constitutional, are the standards to be applied to the instant prosecution? Chief Judge Kenison delivered the opinion of the court.

> The key question is whether the definition of obscene material in RSA 571-A:2 (Supp. 1972) contains sufficiently rigorous standards to withstand constitutional scrutiny. In analysing its provisions, we proceed with the knowledge that the task of identifying obscene material is 'a labor as frustratingly impossible as is nailing custard pies to trees'. (Kuh, Foolish Figleaves? Pornography in and out of Court, 215, 1967).... In essence, RSA 571-A:2 (Supp. 1972) is designed to limit regulation of obscenity to those materials which primarily seek to exploit unhealthy, antisocial attitudes toward sexual conduct, as defined above, by graphically depicting or representing such conduct in a patently offensive manner, leaving nothing to the imagination and having as a theme sex for the sake of sex alone. We are satisfied that our statute is constitutional under the Miller decision. ...Obscenity statutes have been the subject of controversy and confusion since 1957 when Roth v United States, 354 U.S. 476 (1957), was decided. Various members of the Supreme Court have expressed dissatisfaction over their inability to frame definite standards in this area so as to provide fair warning to those prosecuted under the obscenity statutes....The Miller opinion recognized this failure and stressed the need for specificity under state laws, as written or authoritatively construed. It is therefore not correct, as the State has urged, to say that the defendant has sufficient warning under the Roth-Memoirs test as to the obscene nature of the materials in issue.... Under the circumstances of this case, we believe that it would be impermissible to subject the defendant to a trial on these issues in these cases.

Case dismissed.

Davis v. Page. 385 F. Supp. 395. November 27, 1974

Eric and Lisa Davis, members of the Apostolic Lutheran faith and students in the Jaffrey-Rindge school district, brought suit through their father, Harold Gene Davis, against William Page, Superintendent of New Hampshire Supervisory Union #47. The Davis' alleged that the school board's policy requiring students to remain in the classroom even when activities that are religiously offensive to them are taking place, violated their rights as guaranteed by the First Amendment, and violates as well the parents inherent right to control the moral and religious development of their children. The dogma of the Apostolic Lutheran faith makes it sinful for members to view television, movies, and audio-visual projections, to listen to the radio, to engage in play-acting, to sing or dance to worldly music, to study evolution and humanist philosophy, to participate in sexually oriented programs of study, to discuss openly family matters, and to receive the advice of secular guidance counselors. Many of these activities are incorporated into the curriculum of the Jaffrey-Rindge school district. Under present policy, students whose religious beliefs are offended by classroom activities are offered three options: they may place their heads down on the desk, turn their chairs away, or stand at the rear of the classroom. Specifically, The Davises object to the following school board policies: 1. the refusal to permit the Davis children to leave classrooms where audio-visual equipment and softwares are in use; 2. the mandatory attendance requirement for a proposed course entitled "Health and Education"; and 3. the requirement that all students attend music classes. Judge Bownes delivered the opinion of the Court:

> The interest of the children are not co-terminus with that of their parents. There is no doubt that as children, they have constitutionally protected rights.... It would be naive for this court not to recognize that the children's asserted freedom of exercise of religion is, in essence, that of their parents.... Although I treat both the parents' and the children's First Amendment claims together, this does not mean that the interests of the children are synonomous with their parents'.... The basic issue is whether elementary students must be excused from a classroom where nonsectarian educational exercises are taking place, whenever it is alleged that such exercises violate their parents' religious beliefs.
>
> ...The parents' right to control the upbringing of their children must be weighed against the state's interest in providing its youth with a proper and enabling education, and the children's right to receive it... The state has an interest in providing a uniform education for all its students. Considering the multitudes of religions within our Nation, and the wide diversity in their teachings, it is impossible for a state to provide an educational program which is totally acceptable to

all religious faiths. The First Amendment does not protect all religions from non-sectarian views which are distasteful to them. To allow students and parents to pick and choose which courses they want to attend would create a stratified school structure, where division and derision will flourish....Our system of education could not survive if parents were allowed to dictate the courses and modes of study.

For the defense.

Advocates for the Arts et al v. Thomson et al. 532 F. 2d. 792 March 31, 1976

Organizations concerned with the promotion of the arts, members of those organizations, a magazine publisher, and writers for that magazine brought suit to enjoin the New Hampshire governor and executive council from their refusal to approve a grant for a literary magazine on the grounds that it had previously contained a poem which contained language and imagery that some might find offensive. The Advocates for the Arts felt that this violated their rights under the First and Fourteenth Amendments. Chief Judge Coffin delivered the opinion of the Court:

> The plaintiff's claim is rather that a decision not to fund a particular arts project such as Granite based on nothing more than personal preferences constitutes a prior restraint of free expression....A disappointed grant applicant cannot complain that his work has been supported, but only that another's has been promoted in its stead. The decision to withhold support is unavoidable based in some part on the 'subject matter' or 'content' of expression, for the very assumption of public funding of the arts is that decisions will be made according to the literary artistic worth of competing applicants. Given this focus on the comparative merit of literary and artistic works equally entitled to First Amendment protection as speech, courts have no particular institutional competance warranting case-by-case participation in the allocation of funds....In short, if the consideration Granite received was inadequate, it must look elsewhere than to the Constitution for relief.

For the defendant.

Maynard v. Wooley, 406 F. Supp. 1381. February 9, 1976

George and Maxine Maynard, both members of the Jehovah's Witnesses, brought suit against Neal R. Wooley, the Chief of Police in Lebanon, N.H., seeking relief from the enforcement of

NHRSA 262:27-c, which makes the obscurance of the phrase "Live free or die" on New Hampshire license plates a criminal action. The Maynards felt that their actions in covering the motto on their license plates constitutes symbolic speech, and as such should be guaranteed protection under the First and Fourteenth Amendments.

Chief Judge Coffin delivered the opinion of the Court:

> We accept the plaintiffs' contention that their acts constituted constitutionally protected symbolic speech and that the state cannot prosecute them for masking the motto.... Whatever else may be said about the motto, 'Live free or die', it expresses philosophical and political ideas. Plaintiffs' desire not to be aligned with these ideas falls within the ambit of the First Amendment.... Since New Hampshire's interest in the enforcement of its defacement statute is not sufficient to justify the restriction on plaintiffs' constitutionally protected expression, we hold that as applied to plaintiffs, NHRSA 262:27-c abridges the rights protected by the First and Fourteenth Amendments.

For the plaintiffs.

QUOTATIONS

Abrams et al v. United States
250 U.S. 616 (1919)
Mr. Justice Holmes, dissenting:

"It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are concerned. Congress certainly cannot forbid all effort to change the mind of the country.... The ultimate good desired is best reached by free trade in ideas -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market."

Prince v. Massachusetts
321 U.S. 158 (1944)
Mr. Justice Rutledge:

"Parents may be free to become martyrs themselves. But it does not follow that they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves."

Superior Films, Inc. v. Department of Education of Ohio
346 U.S. 587 (1954)
Mr. Justice Douglas:

"The First Amendment draws no distinction between the various methods of communicating ideas. On occasion one may be more powerful or effective than another. The movie, like public speech, radio, or television, is transitory -- here now, and gone in an instant. The novel, the short story, the poem in printed form are permanently at hand to re-enact the drama or retell the story over and again. Which medium will give the most excitement and have the most enduring effect will vary with the theme and the actors. It is not for the censor to determine in any case.... In this Nation every writer, actor, or producer, no matter what medium of expression he may use, should be free from the censor."

Butler v. Michigan
352 U.S. 380 (1957)
Mr. Justice Frankfurter:

"The State insists that, by this quarantining the general reading public against books not too rugged for grown men and women in order to shield juvenile innocence, it is exercising its power to promote the general welfare. Surely this is to burn the house to roast the pig.... The incidence of this enactment is to reduce the adult population of Michigan to reading only what is fit for children."

Flying Eagle Publications, Inc., v. United States
273 F. 2nd 799 (1960)
Chief Judge Woodbury:

"All six of the stories have definitely weird overtones and can certainly be characterized as crude, course (sic), vulgar, and on the whole disgusting. But tested by the reaction of the community as a whole -- the average member of society -- it seems to us that only the feature novelette, 'Body on a White Carpet' and the illustration appearing on page 25 accompanying the story entitled 'Object of Desire', could be found to fall within the ban of the statute as limited in its application by the important public interest in a free press protected in the First Amendment."

Shelton v. Tucker
364 US 487 (1960)
Mr. Justice Stewart Potter

"The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools "

Keyishian v. Board of Regents
385 US 589 (1967)
Mr. Justice Brennan:

"The classroom is peculiarly the 'marketplace of ideas.' The Nations future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, (rather) than through any kind of authoritative selection.'"

United States v. O'Brien
391 U.S. 367 (1968)
Mr. Chief Justice Warren:

"We think it clear that a government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest."

NEW HAMPSHIRE OBSCENITY STATUTE

CHAPTER 650

OBSCENE MATTER

650:1 Obscene Defined.
650:2 Offenses.
650:3 Exemption.
650:4 Justifiable and Non-Commercial Private Dissemination.
650:5 Evidence; Adjudication of Obscenity.

650:1 Obscene Defined

I. Material is obscene if

(a) considered as a whole, its predominant appeal is to prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion, and

(b) it goes substantially beyond customary limits of candor in describing or representing such matters, and

(c) it is utterly without redeeming social importance. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audience.

II. Undeveloped photographs, molds, printing plates, and the like, shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

History

Source. 1971, 518:1, eff. Nov. 1, 1973

650:2 Offenses. A person is guilty of a misdemeanor if he commits obscenity when, with knowledge of the nature of content thereof, he:

I. sells, delivers or provides, or offers or agrees to sell, deliver or provide an obscene writing, picture, record or other representation or embodiment of the obscene; or

II. presents or directs an obscene play, dance or performance, or participates in that portion thereof which makes it obscene; or

III. publishes, exhibits or otherwise makes available any obscene material; or

IV. possesses any obscene material for purposes of sale or other commercial dissemination; or

V. sells, advertises or otherwise commercially disseminates material, whether or not obscene, by representing or suggesting that it is obscene.

History

Source. 1971, 518:1, eff. Nov. 1, 1973.

Annotations

Library references

Operation of nude-model photographic studio as offense. 48 ALR3d 1313

Constitutional Law 274

CJS Constitutional Law 574, 707.

Disorderly House 4.

CJS Disorderly House 4.

Topless or bottomless dancing or similar conduct as offense. 49 ALR3d 1084.

Obscenity 3.

CJS Obscenity 5.

OBSCENE MATTER

650:3 Exemption. A motion picture projectionist or motion picture machine operator who is regularly employed by anybody to operate a projecting machine in a public motion picture theatre shall not be guilty of a violation under this chapter because of the picture which is being projected if he is required to project it as part of his employment.

History

Source. 1971, 518:1, eff. Nov. 1, 1973.

650:4 Justifiable and Non-Commercial Private Dissemination. It is an affirmative defense to prosecution under this chapter that dissemination was restricted to:

I. institutions or persons having scientific, educational, governmental or other similar justification for possessing obscene material; or

II. non-commercial dissemination to personal associates of the accused who are not under eighteen years of age.

History

Source. 1971, 518:1, eff. Nov. 1, 1973

650:5 Evidence; Adjudication of Obscenity. In any prosecution under this chapter evidence shall be admissible to show:

I. the character of the audience for which the material was designed or to which it was directed;

II. what the predominant appeal of the material would be for ordinary adults or any special audience to which it was directed, and what effect, if any, it would probably have on conduct of such people;

III. artistic, literary, scientific, educational or other merits of the material;

IV. the degree of public acceptance of the material in the United States;

V. appeal to prurient interest, or absence thereof, in advertising or other promotion of the material; and

VI. the good repute of the author, creator, publisher or other person from whom the material orignated;

VII. expert testimony and testimony of the author, creator, publisher or other person from whom the material originated, relating to factors entering into the determination of the issue of obscenity.

History

Source. 1971, 518:1, eff. Nov. 1, 1973.

(From NHRSA 1974 - Chapters 568-651)

CHAPTER 650

Obscene Matter

650:1 Obscene Defined.

Annotations

1. Constitutionality

This section is elastic enough to be constitutional under the United States Supreme Court test laid down in Miller v. California. State v. Harding (1974) 114 NH 335, 320 A2d 646.

In case where obscenity statute following old Supreme Court test was first construed and found to be elastic enough to be constitutional under new Supreme Court test, and in which the specific acts prohibited, required by Supreme Court decision to be set out

in the statute, were first delineated, charges against defendant would be dismissed. State v. Harding (1974) 114 NH 335, 320 A2d 646.

Provisions of this section purporting to apply different standards to material designed for children from that designed for adults are constitutional. Opinion of the Justices (1975) -- NH --, 337 A2d 777.

2. Fact questions

Whether allegedly obscene material could be found by the average person applying contemporary community standards to appeal to the prurient interest in sex and whether it lacked literary, artistic, political or scientific value were for the trier of fact. State v. Harding (1974) 114 NH 335,320 A2d 646.

650:2 Offenses

Annotations

1. Constitutionality

This section is not constitutionally defective for imposing a broad ban on the sale or distribution of obscene material in New Hampshire. State v. Harding (1974) 114 NH 335,320 A2d 646.

In case where obscenity statute following old Supreme Court test was first construed and found to be elastic enough to be constitutional under new Supreme Court test, and in which the specific acts prohibited, required by Supreme Court decision to be set out in the statute, were first delineated, charges against defendant would be dismissed. State v Harding (1974) 114 NH 335,320 A2d 646,

(From 1975 Supplement NHRSA - Vol. 5-A Chapters. Cite as RSA 650: 1-2 (Supp.)

CHAPTER 650

Obscene Matter

650:1 Definitions. In this chapter:

I. "Disseminate" means to import, publish, produce, print, manufacture, distribute, sell, lease, exhibit or display.

II. "Knowledge" means general awareness of the nature of the content of the material.

III. "Material" means any printed matter, visual representation, live performance or sound recording including but not limited to, books, magazines, motion picture films, pamphlets, phonographic records, pictures, photographs, figures, statues, plays, dances or other representation or embodiment of the obscene. Undeveloped photographs, molds, printing plates, and the like, shall be deemed obscene material notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

IV. Material is "obscene" if, considered as a whole, to the average person

(a) when applying the contemporary standards of the county within which the obscenity offense was committed, its predominant appeal is to the prurient interest in sex, that is, an interest in lewdness or lascivious thoughts.

(b) it depicts or describes sexual conduct in a manner so explicit as to be patently offensive; and

(c) it lacks serious literary, artistic, political or scientific value.

V. "Predominant appeal" shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audience.

VI. "Sexual conduct" means human masturbation, sexual intercourse actual or simulated, normal or perverted, or any touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals, any depiction or representation of excretory functions, any lewd exhibitions of the genitals, flagellation or torture in the context of a sexual relationship. Sexual intercourse is simulated when it depicts explicit sexual intercourse which gives the appearance of the consummation of sexual intercourse, normal or perverted.

Source. 1971, 518:1 1976, 46:3, eff. June 1, 1976.

Amendments--1976. Amended section generally.

Statement of legislative intent. 1976 46:6 eff. June 1, 1976, provided: "It is the express intent of the general court that RSA 571-B relating to exposing minors to harmful materials and RSA 650 (this chapter) relating to obscene matter shall be enforced to apply only to those persons actually responsible for the production and dissemination of pornographic or obscene materials."

650:2 Offenses. A person is guilty of a misdemeanor if he commits obscenity when, with knowledge of the nature of content thereof, he:

1. sells, delivers or provides, or offers or agrees to sell, deliver, or provide, any obscene material; or (Amended 1976, 46:4. eff. June 1, 1976.)

(No changes in paragraphs II-V.)

Amendments--1976.

Paragraph I: Substituted the word "material" for writing, picture, record or other representation or embodiment of the obscene".

650:5 Evidence; Adjudication of Obscenity. In any prosecution under this chapter, evidence shall be admissible to show:
I. the character of the audience for which the material was designed or to which it was directed;
II. what the predominant appeal of the material would be for ordinary adults or any special audience to which it was directed;
III. the degree of public acceptance of the material in this state;
IV. appeal to prurient interest, or absence thereof, in advertising or other promotion of the material; and
V. the good repute of the author, creator, publisher or other person from whom the material originated;
VI. expert testimony and testimony of the author, creator, publisher or other person from whom the material originated, relating to factors entering into determination of the issue of obscenity.

Source. 1971, 518:1 1976, 46:5, eff. June 1, 1976.

Amendments--1976. Paragraph II: Omitted the words "and what effect, if any, it would probably have on conduct of such people".

Paragraphs III-VII: Former par. III omitted and pars. IV-VII redesignated as pars. III-VI. respectively.

(From 1976 Pamphlet for use W/1975 cumulative supplements--New Hampshire Revised Statutes Annotated. Chapters 1-651.)

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